IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.Rev.Pet.No. 1900 of 2005()

CRA.467/2003 of ADDL.SESSIONS COURT (ADHOC)III, MANJERI
CC.344/2000 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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REVN. PETITIONER: APPELLANT/ACCUSED:

BALAN, S/O. CHATHAN,
PERAYAN HOUSE, THENNALA AMSOM,
KACHADI, KAVUTHUPARAMBA.

BY ADV. SRI.VINOD VALLIKAPPAN

RESPONDENTS: COMPLAINANT/STATE:

STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.SAMSUDIN
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl. R.P. No. 1900 of 2005

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Dated: 25-10-2007

ORDER

The revision revision petitioner who was the accused in C.C. 344 of 2000 on the file of the J.F.C.M., Malappuram for offence punishable under Section 380 I.P.C. challenges the conviction entered and the sentence passed against him concurrently by the courts below for the said offence.

2. The case of the prosecution is that at about 12.30 midnight on 28-5-2000 the accused gained entry into the bedroom through the door left open on the first floor of the house of P.Ws 3 and 11 at Kottakkal and committed theft of a gold chain weighing 8 ½ sovereigns belonging to P.W.11 which was kept in the wall cupboard of the bedroom.

3. On the accused pleading not guilty to the charge framed against them by the court below, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 15 witnesses as P.Ws 1 to 15 and got marked 8 documents as Exts.P1 to P8 and three material objects as MOs 1 to 3..

4. After the close of the prosecution evidence, the accused was questioned under Sec. 313 (1) (b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate, after trial, as per judgment dated 27-11-2003 found the revision petitioner guilty of the offence and sentenced him to rigorous imprisonment for two years. On appeal preferred by the revision petitioners as Crl. Appeal No. 467 2003 before the Sessions court, Manjeri, as per judgment dated 28-5-2005 the Addl. Sessions court (Fast Track Court-III), Manjeri dismissed the appeal confirming the conviction entered and the sentence passed against the revision petitioner . Hence, this revision.

6. I heard Advocate Sri. Vinod Vallikappan, the learned counsel appearing for the revision petitioner, Adv. Sri. K.S. Sivakumar, the Public Prosecutor and Adv. Sri. P. Samsudin, the learned counsel appearing for P.W.11 the claimant of MOs 1 to 3 .

7. The learned counsel appearing for the revision

petitioner made the following submissions before me in support of his fervent plea for the acquittal of the accused:-

According to P.Ws 3 and 11 the occurrence took place in the midnight of 28-5-2000 and PWs 3 and 11 had absolutely no hesitation or doubt about the identity of the accused even on the next day morning. But the complaint has been lodged only after 54 days of the occurrence. If these witnesses are to be believed, what was lost to P.W.11 was her thali chain which was as precious that one would have expected her to immediately lodge a complaint. Eventhough the evidence of P.W.4 the owner of Five Star Financiers will go to show that the accused had pledged a gold chain, the same has not been produced or identified in this case . From the evidence of P.Ws 4 to 6 and P.W14 (Investigating Officer) it cannot be concluded that the chain which was pledged by the accused with P.W.4 was the chain belonging to P.W.11. Likewise, the evidence of P.W.7 that the accused sold him a chain on 11-07-2000 and the same was converted by his goldsmith into MO2 ingot again does not prove that it was the very same chain belonging to P.W.11 which was sold by the accused to P.W.7. PWs 3 and 11 have not and could not have also identified MO2 ingot as the product obtained after

melting the said gold chain . As for MO1 locket it has been seized by the police from an abandoned house and going by the fact that P.Ws 3 and 11 were having a hunch against the revision petitioner right from the next day morning itself, the chances are that MO1 locket could have been planted by them with the sole intention of falsely implicating the accused whom they were suspecting. Similarly, if the accused had realised a sum of Rs. 24,000/- by pledging the chain, there was no need for him to keep a sum of Rs. 3,900/- along with the locket in the abandoned house only to be recovered by the police under a recovery stage managed by them. The conviction recorded against the revision petitioner overlooking those vital aspect cannot be sustained.

8. I am afraid that I cannot agree with the above submissions. It is true that both P.Ws 3 and 11 were newly married couple and were sleeping in the first floor of the house leaving the doors open P.W.11, the wife had only a vague hunch that the intruder whom she had seen during the dead of the night in her bedroom was the accused. She was not very sure of the identity of the accused. Going by her testimony she had complained about the theft of the gold chain on the very next

day to the police and the police had also came to the house as part of the investigation. It is true that Ext.P2 F.I. statement has been lodged after 54 days of the occurrence. From that alone, it cannot be concluded that the theft complained of was false or a make believe stage managed for the purpose of some somehow or other implicating the accused falsely , particularly, when no sort of motives have been attributed to P.Ws 3 and 11 against the accused.

9. While there is room for accepting the contention of the revision petitioner with regard to the gold chain since the gold chain which P.W.11 allegedly lost has not been recovered in that form, there is no such scope or speculations with regard to MO1 locket on which the names of both P.Ws 3 and 11 have been inscribed. Both thse witnesses had absolutely no difficulty to identify MO1 locket as the one which P.W.11 was wearing during the ill-fated night.

10. It was on the strength of Ext.P1 (a) confession statement given by the accused to P.W.14 that the locket was recovered from an uninhabited house along with MO3 series of currency notes which constitute the remaining sale proceeds of the gold chain. Both P.Ws 1 and 2 who are attestors to Ext.P1 seizure mahazar under which MO1 locket was seized supported the prosecution. When the accused has

been found in recent possession of MO1 locket the presumption can legitimately be drawn under Sec. 114 of the Evidence Act that the accused is either the thief or the receiver of stolen property. The said presumption coupled with the evidence of P.Ws 3 and 11 points the accusing finger at the revision peittioner only. Under these circumstances, the conviction recorded against the revision petitioner cannot be said to be erroneous or unsustainable. Both the courts below have concurrently found that the revision petitioner is guilty of the offence. I see no reason to interfere with the conviction recorded against the revision petitioner.

11. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioner. It was got ascertained through the learned Public Prosecutor as to whether the revision petitioner has got any other antecedents or whether he is a habitual offender. The reply received was in the negative. Considering the entire facts and circumstances of the case, I do not think that the revision petitioner deserves penal servitude by way of incarceration for the offence for which he has been convicted. He was aged 32 on the date of occurrence and is a driver by avocation. Considering the totality circusmtances, I am of the view that interests of justice will be adequately met by imposing an appropriate

fine. Accordingly, the sentence imposed on the revision petitioner is set aside and instead, he is sentenced to imprisonment till the rising of court and to pay a fine of Rs. 10,000/-. The fine amount shall be deposited within two months from today failing which he shall suffer simple imprisonment for three months. MOs 1 to 3 shall be returned to P.W11.

This Revision is disposed of confirming the conviction entered but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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